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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,615	11/29/2001	Kenneth B. Albritton	P56341	2308

7590 02/11/2005

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EXAMINER	
MAI, TRI M	

ART UNIT	PAPER NUMBER
3727	

DATE MAILED: 02/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/995,615	ALBRITTON, KENNETH B.	
	Examiner	Art Unit	
	Tri M. Mai	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 24-27,32,34,35 and 37-55 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 24-27,32,34,35 and 37-55 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the back wall being separate from the other walls must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 41, 43, 45, and 46-53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the

claimed invention. The disclosure does not teach the back wall being folded only frontally forward, and the back wall being separate from other walls.

Regarding claim 46, it is unclear where the back wall being separate from the other walls.

In claim 43, claim 35 defines the bottom member as a separate member. However in claim 43, the claim recites that the back wall folding the top portion of the back wall to the front edge of a **bottom portion of the back wall**. Since claim 35 defines the bottom member as a separate member the back wall would be attach to the bottom portion, not the **bottom portion of the back wall.**

3. Claims 41, 45-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 41, "said back wall being folded by the top portion of said backwall being folded" is confusing.

Regarding claim 46, it is unclear how the backwall being separate from the other walls.

4. Claims 39, 40, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Tong (63334519). Tong teaches a backside member, a bottom member and straps. Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

5. Claims 24, 25, 26, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tong (6334519) in view of Fournier. Tong teaches a hook unit 13, back wall, left and right walls 12, a bottom portion 16 attached to a bottom of the back wall 1, a plurality of compartments on a front surface of the back wall, and at least one strap as claimed.

Tong meets all claimed limitations except for the netted compartments. Fournier teaches that it is known in the art to provide netted compartments. It would have been obvious to one of ordinary skill in the art to provide netted compartments in Tong as taught by Fournerier to provide venting for the contents. Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

6. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Tong rejection as set forth above, and further in view of Briggs et al. (4901897). Briggs teaches that it is known in the art to provide straps 18. It would have been obvious for one of ordinary skill in the art to provide first and second extended portions in either Tong or Franklin as taught by Briggs to keep the contents together.

7. Claims 35, and 37 are rejected under 35 U.S.C. 102(a) as being anticipated by Fournier. Fournier teaches a back wall 2, left and right wall, a bottom portion attached to a bottom of the back wall 1, a first wall 2 extending from the bottom portion and assisting in holding a sufficient portion of left and right walls together, a plurality of compartments on a front surface of the back wall comprising of netted material, and at least one strap 5 as claimed. The term backpack does not impart any structure over the bag in Fournier. Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

8. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over either the Fournier or Tong rejection as set forth above, in view of Davis et al. (2626689). Davis teaches that it is known in the art to provide strap 52. It would have been obvious to one of ordinary skill in the art to provide straps in either Fournier or Tong as taught by Davis to provide a place for hanging garments.

9. Claims 24-27, 32, 35, 37, and 39-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. (5575362) in view of Wulf et al. (5749503), and further in view of Bomes et al. (5054589). Franklin teaches a luggage having a foldable back wall with mesh compartments as shown in Fig. 14, and hook 152 that can be attached to an external object, and a front portion as shown in Fig. 14. Franklin meets all claimed limitations except for the straps. Wulf teaches that it is known in the art to provide back straps. It would have been obvious to one of ordinary skill in the art to provide back straps in Franklin as taught by Wulf to handle the luggage easily.

Bomes teaches that it is known in the art to provide mesh compartments 60. It would have been obvious to one of ordinary skill in the art to provide mesh compartments in Franklin as taught by Bomes to provide the desired venting.

Regarding claim 45, it would have been obvious to one of ordinary skill in the art to provide the length of the first and second sidewalls greater than a width of the back wall in Franklin as taught by Wulf to provide the desired dimension for the luggage.

10. Claims 24-27, 32, 35, 37, 39-48, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. in view of either Wulf et al. or Yu (6129254), and further in view of Fournier. It would have been obvious to one of ordinary skill in the art to provide a plurality of netted compartments covering the front portion of the back wall to accommodate a plurality of objects.

Regarding claim 49, the tabs 25 in Fournier are the straps as claimed.

11. The allowability of claims 50-53 cannot be determined in view of the new matter rejection.

12. Applicant's arguments filed 11/22/04 along with the affidavit for commercial success have been fully considered but they are not persuasive. With respect to the 102 rejection, applicant asserts that by using Kilduff, there cannot be a 102 rejection. It is submitted that the rejection over Fournier is proper since it meets all claimed limitations of the claims. The Kilduff reference shows the bag in Fournier can be used as a backpack as intended.

Furthermore, applicant asserts that there are two sets of zippers in Tong. It is noted that there is only one set of zipper 115 in Tong and this zipper goes across the panel 111.

With respect to the shoulder straps being disposed along the longitudinal side of the back surface. It is submitted that the two strap in Tong disposed along the longitudinal side of the back surface as claimed. The claim does not specify each of the straps being oriented with its length along the longitudinal side of the back surface. The claim only recite the two straps being disposed along the longitudinal side, and the two straps are together disposed along the longitudinal side.

With respect to the Franklin in view of Wulf, applicant argues that the back straps are not disposed along the back wall. It is noted that the claim does not limit the straps being attached to the back wall. Cleary, the straps are disposed, or position, on the back wall, even though one end is not anchored on the back wall.

With respect to the hook, the claim recites the hook being attached to an external object is an intended use. Clearly, the hook in Franklin can be hook to an external object.

With respect to the commercial success, it is noted that affidavit for commercial success cannot be used to over the 102 rejections over Tong and Fournier.

Furthermore, applicant fails to establish the nexus. Furthermore, there is no evident of market share has increased due to the specificity of the invention.

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (571)272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
Art Unit 3727